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State of Florida



Public Service Commission

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TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
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FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (GILCHRIST,
SIMMONS) *SAS*
OFFICE OF THE GENERAL COUNSEL (TEITZMAN, CHRISTENSEN) *pac*

RE: DOCKET NO. 020129-TP - JOINT PETITION OF US LEC OF
FLORIDA, INC., TIME WARNER TELECOM OF FLORIDA, L.P., AND
ITC^DELTACOM COMMUNICATIONS OBJECTING TO AND REQUESTING
SUSPENSION OF PROPOSED CCS7 ACCESS ARRANGEMENT TARIFF
FILED BY BELL SOUTH TELECOMMUNICATIONS, INC. *2.24.03 BK*

AGENDA: 10/7/2003 - REGULAR AGENDA - POST-HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020129A.RCM

CASE BACKGROUND

On January 18, 2002, BellSouth Telecommunications, Inc. (BST) filed a tariff with this Commission introducing the CCS7 Access Arrangement. This tariff filing also restructured the offering for Commercial Mobile Radio Service (CMRS) providers, and directed them to the equivalent CCS7 Access Arrangement available in the Access Services Tariff. Further, as part of this filing, local switching rates were reduced to reflect the introduction of charges for intrastate CCS7 usage. The tariff filing went into effect on February 17, 2002.

On February 15, 2002, US LEC of Florida, Inc., Time Warner Telecom of Florida, L.P., and ITC^DeltaCom Communications

DOCUMENT NUMBER-DATE

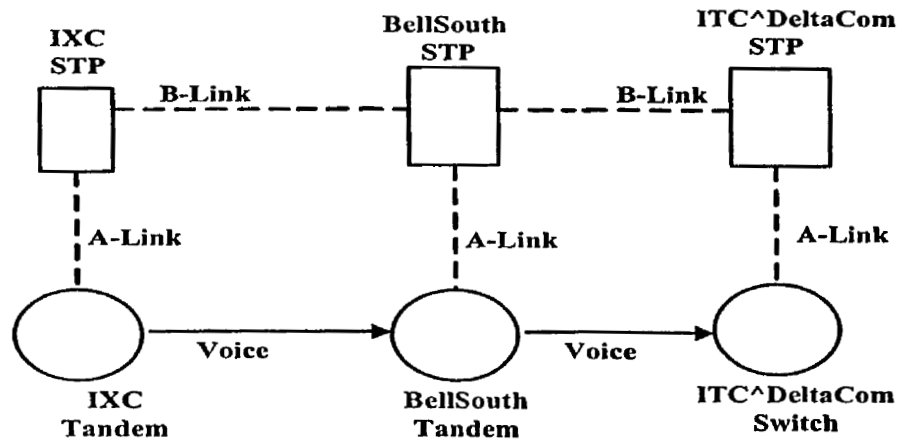
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FPSC-COMMISSION CLERK

(Petitioners) filed a Joint Petition objecting to and requesting suspension of the CCS7 Access Arrangement Tariff filed by BST, and requesting that the Commission schedule a formal administrative hearing to address the issues raised in their Petition. On March 22, 2002, BST filed its response to the Petition filed on February 15, 2002. On July 2, 2002, MCI WorldCom Communications, Inc., (MCI) and MCIMetro Access Transmission Services, LLC (MCIMetro) filed their petition to intervene in this docket. On July 16, 2002, by Order No. PSC-02-0964-PCO-TP, the Commission granted intervention to MCI and MCIMetro. This matter was set for an administrative hearing by this Commission by Order No. PSC-02-1179-PHO-TP.

Staff notes that this matter addresses the signaling necessary to connect (set up) and disconnect (tear down) calls, also referred to as Signaling System 7 (SS7) or Common Channel Signaling 7 (CCS7). SS7 is the industry standard signaling system that uses an out-of-band or overlay network for call routing and database access.

MODIFIED
Exhibit GRF-1



As shown in the diagram, the voice traffic flows between switches (tandems) while the signaling messages necessary for call set-up and tear-down flow between signaling transfer points (STPs). The messages used to perform call set-up and tear-down are known as Integrated Services Digital Network User Part (ISUP) messages. The

SS7 network begins its functionality by sending an Initial Address Message (IAM) from the calling network to the called network. Through a series of additional sent and received messages, the SS7 network confirms the availability of facilities, terminating equipment, and whether the called party answered the phone. Once confirmed, the switches and trunks are actually engaged to complete the call. Similarly, when one of the parties hangs up the phone, messages are exchanged to release the facilities. (Montano TR 131-132)

Likewise, Transactional Capabilities Application Part (TCAP) messages provide non-circuit related information for transactions that require an exchange of information between networks, such as 800 services, credit card calling, and calling name database (CNAM) access. Staff notes that access links (A-Links) connect signaling end points, i.e., databases and switches (including subtending carrier's switches) to a STP, while bridge links (B-Links) interconnect STPs between networks. (Randklev TR 297)

Staff presented its post-hearing recommendation to the Commission at the February 18, 2003 Agenda Conference. At that time, the Commission voted on nine issues and deferred voting on three issues. A summary of the actions taken by the Commission at the February 18, 2003 Agenda Conference is provided below.

- ◆ The Commission voted to approve staff on Issue 1, in which staff recommended that the evidence supports a finding that BellSouth's CCS7 access tariff applies to nonlocal intrastate traffic and to local traffic if the carrier does not have an approved interconnection agreement.
- ◆ The Commission voted to approve staff on Issue 2, in which staff recommended that the evidence supports a finding that BellSouth provided CCS7 access services to CLECs, IXCs and other carriers prior to the filing of its CCS7 tariff.
- ◆ The Commission voted to approve staff on Issue 3, in which staff recommended that the evidence supports a finding that BellSouth's CCS7 access arrangement tariff is not revenue neutral.

- ◆ The Commission denied staff's recommendation on Issue 4 and determined that there is an existing access service that meets the parameters of Section 364.163, Florida Statutes. Staff notes that although Issue 4 was worded broadly, the Commission made a narrow decision finding only that the CCS7 tariff complied with the requirements of Section 364.163, Florida Statutes. Accordingly, it is staff's opinion the Commission may address whether or not the CCS7 tariff complies with other provisions of Chapter 364, Florida Statutes in the remaining open issues.

- ◆ The Commission voted to approve staff on Issue 5, in which staff recommended that the evidence supports a finding that under the CCS7 access arrangement tariff, BellSouth charges the following for the types of traffic identified in Issue 1:

Monthly (Recurring) Charges:

| | |
|---|----------|
| CCS7 Signaling Connection, per 56 kbps facility | \$155.00 |
| CCS7 Signaling Termination, per STP port | \$337.05 |

One-time (Nonrecurring) Charges:

| | | |
|---|-----------------------|--------------|
| CCS7 Signaling Connection, per 56 kbps facility | \$150.00 | |
| CCS7 Point Code Establishment or Change | <u>1st</u> | <u>Add'l</u> |
| Originating Point Code | \$40.00 | \$ 8.00 |
| Per Destination Point Code | \$ 8.00 | \$ 8.00 |

Usage (Per Signaling Message) Charges:

| | |
|---------------------------------|-----------|
| Call Set Up, per message (ISUP) | \$.000035 |
| TCAP, per message | \$.000123 |

- ◆ The Commission voted to approve staff on Issue 6, in which staff recommended that the evidence supports a finding that pursuant to its tariff BellSouth does not bill multiple carriers for the same message on any given segment of a call, and from a technical perspective, BellSouth's methodology is accurate. However, the Commission found that it is not possible for a carrier to report the appropriate jurisdictional factor without purchasing a message counting system. Consequently, without a message counting system the messages would be inappropriately billed under BellSouth's default jurisdictional factor as discussed in Issue 8.

- ◆ The Commission voted to approve staff on Issue 7, in which staff recommended that the evidence supports a finding that pursuant to its CCS7 tariff, BellSouth bills for ISUP and TCAP messages regardless of the originating party or the direction of the message, and also found there are several significant factors beyond the scope of this issue that should be considered in order to determine whether these changes are appropriate, and, thus, reserves final judgement for Issue 10.
- ◆ The Commission deferred Issue 8, which addresses what is the impact, if any, of BellSouth's CCS7 access arrangement tariff on subscribers and does such impact, if any, affect whether BellSouth's CCS7 access arrangement tariff should remain in effect.
- ◆ The Commission voted to approve staff on Issue 9, in which staff recommended that the evidence supports a finding that BellSouth does not bill ILECs for signaling associated with local or intrastate traffic. However, while BellSouth does not bill ILECs per message charges, it bills the higher local switching rate, pursuant to section E16 of BellSouth's tariff.
- ◆ The Commission deferred Issue 10, which addresses whether BellSouth's CCS7 Access Arrangement Tariff should remain in effect, and, if not, what action should the Florida Public Service Commission take?
- ◆ The Commission deferred Issue 11, which considers if the tariff is to be withdrawn, what alternatives, if any, are available to BellSouth to establish a charge for non-local SS7 access service pursuant to Florida law.
- ◆ Issue 12 addresses whether the docket should be closed, and of course, the docket was left open.

On its own Motion, the Commission scheduled oral argument on the remaining issues in this docket. This is staff's recommendation to address the three issues that were deferred by the Commission and addressed by the parties in oral argument held on August 19, 2003. Finally, staff notes that ITC^DeltaCom Communications and Time Warner Telecom L.P. have withdrawn from this docket.

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The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01(3), 364.04, 364.051(5), and 364.163, Florida Statutes.

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List of Acronyms

| | |
|---------|---|
| A-Links | Access Links |
| ACM | Address Complete Message |
| ALEC | Alternative Local Exchange Carrier |
| AMA | Automatic Message Accounting |
| ANM | Answer Message |
| B-Links | Bridge Links |
| CLASS | Custom Local Area Signaling Services |
| CLEC | Competitive Local Exchange Carrier |
| CMRS | Commercial Mobile Radio Service |
| CNAM | Calling Name Database |
| CCS7 | Common Channel Signaling 7 |
| COT | Continuity Test Message |
| DPC | Destination Point Code |
| GSST | General Subscriber Services Tariff |
| IAM | Initial Address Message |
| ILEC | Incumbent Local Exchange Carrier |
| ISUP | Integrated Services Digital Network User Part |
| IXC | Interexchange Carrier |
| kbps | Kilobits Per Second |
| LATA | Local Access and Transport Area |
| LEC | Local Exchange Carrier |
| LMS | Link Monitoring System |
| MOU | Minutes of Use |
| OPC | Originating Point Code |
| PIU | Percentage Interstate Usage |
| PLU | Percentage Local Usage |
| REL | Release |
| RLC | Release Complete |
| SCP | Service Control Point |
| SS7 | Signaling System 7 |
| STP | Signal Transfer Point |
| TELRIC | Total Element Long-Run Incremental Cost |
| TCAP | Transactional Capabilities Application Part |
| UNE | Unbundled Network Element |

DISCUSSION OF ISSUES

ISSUE 8: What is the impact, if any, of BellSouth's CCS7 Access Arrangement Tariff on subscribers? Does such impact, if any, affect whether BellSouth's CCS7 Access Arrangement Tariff should remain in effect?

RECOMMENDATION: Staff recommends that the evidence supports a finding that BellSouth's CCS7 Access Arrangement Tariff would unnecessarily and unreasonably increase costs for competitive carriers that provision their own SS7 networks by requiring that they invest in a system simply to reciprocal bill BellSouth. Staff notes that the Commission determined that CLECs are precluded from providing access in BellSouth's territory for themselves or any other entity where interconnection trunks are employed with BellSouth. Therefore, carriers are practically forced to interconnect with BellSouth's SS7 network. Further, by imposing unnecessary costs and, in effect, unduly discriminating against carriers that provide their own SS7 networks, staff believes that the tariff violates Sections 364.01(4) and 364.10(1), Florida Statutes. Staff believes these impacts should be considered in determining whether BellSouth's tariff should remain in effect.
(GILCHRIST, SIMMONS)

POSITION OF THE PARTIES:

PETITIONERS: BellSouth's tariff effectively shifts the charge for its SS7 service from its mobile services tariff, which applies to cellular mobile carriers, to carriers who purchase service from the switched access tariff. Under the tariff, CLECs, IXCs and wireless carriers are charged a per message cost for the use of the SS7 network.

BELLSOUTH: BellSouth's tariff has no improper impact on subscribers and, therefore, it should remain in effect.

STAFF ANALYSIS: This issue before the Commission is to determine the impact BellSouth's tariff will have on CLECs and third-party SS7 providers, including a carrier's ability to compete.

Arguments

US LEC witness Montano asserts that BellSouth's tariff would have several adverse consequences in Florida. First, BellSouth

has restructured and raised access rates in a manner that increases cost to competitive providers. She contends that competitors will either have to absorb the cost increase, or pass through these costs to end users. Second, she asserts that the new rate structure makes it difficult to audit BellSouth's charges. (TR 135) Third, she testifies that ISUP messages flow in both directions during the life of a call without regard to the originating party; therefore, BellSouth's methodology imposes a charge without regard to who actually is the "cost causer." (TR 140) When a BellSouth customer originates a call, witness Montano believes that BellSouth's customer is the cost causer; however, BellSouth's tariff offers no distinction as to the cost-causing carrier. Regardless, she contends that B-Links are jointly provided, and thus US LEC encounters the same usage at its STP as BellSouth. (TR 141)

ITC^DeltaCom witness Brownworth testifies that BellSouth's tariff would force third-party providers to become BellSouth's billing agent or to absorb unreasonable expenses, which ultimately increases prices to DeltaCom's customers. (TR 41) He explains that the information BellSouth provides is insufficient to pass costs through to other carriers.

In order for us to properly pass through BellSouth's CCS7 charges, we would first need SS7 call records with OPC (Originating Point Code) and DPC (Destination Point Code) information so that each SS7 message can be related (and billed) to the proper carrier. Next, in addition to billing messages to the third-party customers, ITC^DeltaCom would have to require all of our customers to "report jurisdictional reporting" of the messages for local and interLATA usage. (TR 42)

Witness Brownworth contends that ITC^DeltaCom's system would have to be more sophisticated than the system BellSouth employs. As a third-party provider, ITC^DeltaCom's system would have to identify and store carriers via OPC and DPC combinations, apply a jurisdictional percentage, and generate bills for these charges. (TR 42) He contends that BellSouth does not have a mechanism for an ALEC or third-party provider to submit jurisdictional reporting. Moreover, witness Brownworth maintains that BellSouth has not provided proper instructions on SS7 traffic reporting. (TR 43)

In response to BellSouth's tariff filing, witness Brownworth claims that ITC^DeltaCom is reviewing its position as a third-party provider, and thus has not added any new customers. He continues that currently ITC^DeltaCom is working with other companies to seek ways of possibly routing SS7 around BellSouth. However, since BellSouth is the sole provider of access in its territory, carriers cannot avoid BellSouth's ISUP charges. (TR 43-44)

Regarding jurisdictional factors, witness Brownworth contends that BellSouth's methodology for calculating percentage local usage (PLU) and percentage interstate usage (PIU) provided in its testimony is not consistent with BellSouth's jurisdictional factor guideline published on its website. (TR 52) He explains:

Both Mr. Ruscilli's statements in his direct testimony and the intrastate tariff imply that PIU and PLU will be determined by the number of messages rather than the number of switched access minutes. The BellSouth Jurisdictional Factor Guideline, however, directs CLECs and IXCs to report minutes of use rather than number of messages for the signaling PIU. (TR 53)

He adds that neither BellSouth's intrastate tariff filing nor its Jurisdictional Factor Guideline define local traffic. Witness Brownworth suggests that BellSouth's definition of local calls applies only to carriers with an approved interconnection agreement with BellSouth. Therefore, he believes that ITC^DeltaCom would also be required to ascertain and maintain records of whether its customers have an interconnection agreement with BellSouth. (TR 54)

For example, it is not clear whether a wireless carrier ordering type-two service from the GSST (General Subscriber Services Tariff) or an independent local exchange carrier that has a settlement agreement with BellSouth would be considered to have an agreement for local service. (TR 54)

Witness Brownworth points out that BellSouth's tariff does include default language; however, it does not address the local contribution from carriers with an interconnection agreement. He claims the tariff only states that "50% of the messages will be billed at the intrastate rate and the other 50% of the messages billed [at] the interstate rate." He contends that if a carrier

refuses or is incapable of reporting SS7 messages, BellSouth's tariff does not address this issue. (TR 54-55)

As a third-party provider, witness Brownworth asserts that ITC^DeltaCom would be required to ask carriers employing its SS7 to provide PLU and PIU information, which is very sensitive data to request from competitors. In order to bill appropriately, he maintains that ITC^DeltaCom would require the originating and terminating destination per carrier for each message, not just a message count. (TR 54) Alternatively, witness Brownworth offers that until BellSouth or a third-party provider has the capability to report jurisdiction of SS7 messages, ITC^DeltaCom should be allowed to use their own PLUs/PIUs versus requiring an ALEC to acquire and maintain a record of these messages. (TR 55)

BellSouth witness Follensbee testifies that the PIU and PLU factors provided by carriers are applied to the total number of TCAP and ISUP messages. Then, the rates from the Federal tariff are applied to interstate messages, the CCS7 tariff rates would apply to non-local intrastate messages, and the rates from any local interconnection agreement would apply for local messages. However, if the carrier does not have an interconnection agreement with BellSouth, i.e., third-party hubbing vendors, the CCS7 tariff rate applies for local as well. (Follensbee TR 98) He contends:

BellSouth requires that any interconnecting companies provide a PIU (percentage interstate usage) factor when ordering and provisioning signaling links. Further, companies entering into local interconnection agreements for local service/signaling must also provide a PLU (percentage local usage) factor when ordering and provisioning signaling links. (TR 186)

He maintains that the tariff more accurately bills carriers that use BellSouth's SS7 network. (TR 227-228) Witness Follensbee explains that in the past, BellSouth presumed that signaling costs were higher if call duration was longer, but that is not true. Basically, the signaling typically occurs only when setting up and tearing down calls. (TR 270-271) BellSouth witness Milner clarifies that the jurisdictional factor for voice and signaling messages could be different; therefore, a CLEC is not required to derive a factor for signaling from its voice factor if it has an accurate way of differentiating between them. (TR 360-361)

Witness Follensbee contends that although CLECs argue that increasing their costs will directly impact the rates of their business customers who purchase the service, the possibility always exists that charges to customers may increase when their provider or supplier experiences an increase in costs for goods and services. He testifies that price changes are the characteristics of a free market; however, it "is not a valid basis for denying a proposed rate change." (TR 205-206)

Witness Follensbee admits that prior to the implementation of the Link Monitoring System (LMS), the SS7 network was already in place. He contends that BellSouth's SS7 system costs were recovered by higher local switching rates. (TR 226) He also concedes that for carriers that do not use BellSouth's local switching, the reduction in the local switching rate would not offset BellSouth's SS7 charges. (TR 227)

Oral Argument

Counsel for US LEC argues that BellSouth's CCS7 access arrangement tariff unnecessarily and unreasonably increases costs for CLECs that provision their own SS7 networks by requiring those CLECs to invest in a system simply to reciprocal bill BellSouth. (ORTR 11)¹ Also, he argues that BellSouth's CCS7 access arrangement tariff is indisputably discriminatory because BellSouth only charges CLECs, IXCs and third-party hubbing vendors for the SS7 network per signal, but does not bill ILECs for the signaling associated with local or intrastate traffic. (ORTR 12) Further, he argues that pursuant to Section 364.10, Florida Statutes, any telecommunications company, including BellSouth, may not make or give any undue or unreasonable preference or advantage to any person or subject any person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (ORTR 15)

US LEC Counsel argues that this tariff is undeniably anti-competitive because the rates BellSouth charges CLECs, IXCs, and third-party hubbing vendors are not cost-based. He asserts that CLECs, IXCs, and third-party hubbing vendors pay for their own SS7 network and subsidize BellSouth's SS7 network at prices that even exceed BellSouth's costs of provisioning SS7 service. (ORTR 17)

¹Oral Argument Transcript

Counsel for WorldCom argues that BellSouth's tariff is inappropriate and too vague for a customer to understand its terms and that BellSouth failed to provide sufficient billing detail to enable customers to evaluate their bills. Also, she contends that BellSouth's tariff indicates that the customer is responsible for reporting to BellSouth the PIU for BellSouth's CCS7 access arrangement; it is unclear from the tariff how the factor is defined and precisely how it is to be calculated. Further, she argues that customers are required to provide a PIU for traffic that cannot be accurately tracked, and when carriers cannot provide an estimate, they are subject to a default percentage which favors BellSouth. (ORTR 25) She asserts that the CCS7 tariff is not clear as to whether the factor the customer provides is supposed to apply to the customer's originating traffic only or to both its originating and terminating traffic. Although the tariff explains how to calculate PIU for minutes-of-use-based billing elements, she contends the tariff says nothing about how to calculate PIU for message-based billing elements such as the SS7 signaling and when the customers are unable to provide accurate factors, BellSouth arbitrarily and incorrectly applies a default factor. She asserts that application of the default factor could result in local messages being billed at access rates. (ORTR 23)

WorldCom Counsel further argues that the impact of BellSouth's CCS7 tariff is that it significantly increases the cost to customers while generating revenue for BellSouth. (ORTR 25) While customers such as WorldCom have seen significant increases in their bills under BellSouth's CCS7 tariff, BellSouth has failed to provide adequate billing detail to them, which means that WorldCom has no way to determine the accuracy of its bill. Finally, WorldCom Counsel argues that because of BellSouth's refusal to provide origination and destination point codes, and because the tariff is vague, the Commission should cancel BellSouth's CCS7 tariff. (ORTR 26, 27)

Counsel for BellSouth argues that a bill-and-keep arrangement is not appropriate. Even if the number of messages and filed rates of the two carriers are the same, he claims that the bills may not be equal because the jurisdictional mix may not be the same. (ORTR 39) He contends that there are several ways in which the carriers can determine the jurisdictional factors, and if the carriers come up with other methodologies that make sense,

BellSouth will accept them, as long as there is no glaring problem. (ORTR 42)

According to BellSouth Counsel, CLECs can bill BellSouth back, but he does not believe the CLECs have filed rates that would authorize such billing. For the same reason, BellSouth Counsel said that BellSouth does not send a payment to the CLEC. (ORTR 42)

Also, BellSouth Counsel argues that the reason BellSouth tried to make its filing revenue neutral was not because the statute requires it or because that is typically required. (ORTR 48) BellSouth was going to start charging on a per-message basis for something that had not been chargeable in the past. According to BellSouth Counsel, BellSouth believed the best way to address this under the statute would be to implement a charge and adjust some other type of access charge so that the filing would be revenue neutral. (ORTR 48)

Analysis

Staff reviewed the testimony several times looking for any testimony that reflected a positive impact on subscribers; however, staff did not observe any. BellSouth witness Follensbee testifies that price changes are the characteristics of a free market, and should not be considered in determining whether its tariff should remain valid. (TR 205-206) However, the Petitioners assert that BellSouth is the sole provider of access in its territory. (TR 43-44) Staff cites the BellSouth/WorldCom Order, Order No. PSC-01-0824-FOF-TP, issued March 30, 2001:

We firmly believe that BellSouth's ability to bill subtending companies in an accurate manner is in doubt if the local and switched access traffic were delivered on the same trunk group. In this case, we find that BellSouth's established process of routing access traffic on access trunks should be continued. Therefore, we find that WorldCom shall not be permitted to commingle local and access traffic on a single trunk and route access traffic directly to BellSouth end offices. WorldCom shall route its access traffic to BellSouth access tandem switches via access trunks. (pp. 97-98)

Staff notes that WorldCom was also denied reconsideration of its attempt to provide access to BellSouth's end offices in its territory (Order No. PSC-01-1784-FOF-TP). Reviewing the basis for the decision, staff notes that at the time of the decision, BellSouth did not provision multi-jurisdictional trunks. Subsequent to that decision, the Commission required BellSouth to provision multi-jurisdictional trunks.

Upon consideration, we find that the parties' agreement shall contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including an access trunk group. . . .
(Order No. PSC-01-1095-FOF-TP, issued May 8, 2001, pp. 37-38)

To the extent that CLECs operating in BellSouth's territory are not allowed to commingle switched access with other traffic types over a single trunk group, due to an inability to successfully resolve billing issues, they presumably are unable to achieve the same economies of scale and scope that BellSouth can. As such, it appears to staff that the switched access market is less competitive than BellSouth would have one believe.

Although the Commission found that BellSouth's tariff is not revenue neutral, for the sake of analysis, staff assumes that the tariff is revenue neutral in order to examine the impact of this tariff. BellSouth witness Follensbee asserts that BellSouth's tariff filing creates SS7 message charges while reducing local switching rates. (TR 200) He adds that revenue neutrality is not based on the impact on a specific customer or class of customers. (TR 212) He acknowledges that some carriers are negatively impacted, but also points out that some carriers are positively impacted. He maintains that the tariff more accurately bills carriers that use BellSouth's SS7 network. (TR 227-228) On the other hand, the Petitioners believe that BellSouth assesses its message charge in a manner that disadvantages competitors, specifically carriers with their own SS7 networks and third-party hubbing vendors.

BellSouth's proposal penalizes carriers that have built their own networks and happened to acquire customers in competition with BellSouth. (Petitioners TR 167)

We have not added any new customers to our product line and are reviewing our position of being a third-party provider. (Petitioners TR 43)

The Petitioners contend that the tariff specifically increases rates for intraLATA toll providers, since the rate reduction is to the local switching rate, which is applied at BellSouth's end offices. The Petitioners contend that all intraLATA toll traffic is routed through BellSouth's access tandem and subject to tandem switching rates. Therefore, the Petitioners assert that the tariff represents a pure increase in rates, because they do not employ BellSouth's end office switching. (Petitioners TR 97-98) Staff observes that BellSouth does not rebut the Petitioners' assertion that BellSouth's tariff directly increases costs to CLECs with their own SS7 networks and to competitive SS7 providers by requiring CLECs to either invest in their own message counting system simply to offset-bill BellSouth, or to absorb the per message charges and most likely pass them on to their subscribers as an aggregate fixed rate. (Brownworth TR 102, 123-124) As applied, it appears to staff that BellSouth's tariff increases costs to interconnecting competitors regardless of whether they provide their own SS7 or purchase SS7 from BellSouth.

Staff agrees with BellSouth that an IXC should not be allowed to bill local carriers for SS7 messages. (Randklev TR 297) Accordingly, staff believes that the tariff presents two billing scenarios that differ relative to the local carrier(s) of the end users. Staff observes that local carriers bill IXCs for the end office switching involved in call origination and termination. Therefore, when BellSouth originates or terminates the toll call, an IXC would be assessed BellSouth's lower end office switching rate. Under this scenario, staff believes that the tariff's impact on IXCs may lean towards revenue neutrality. While BellSouth's tariff sets forth a SS7 per message charge that is essentially not related to call duration, any savings encountered by the IXC relative to BellSouth's reduction in local switching rates depends upon the IXC's average call duration. (TR 270-271) Therefore, it is unclear whether BellSouth's tariff on balance benefits or harms IXCs when the call is terminated to, or originated from, a BellSouth end user. On the other hand, when a CLEC originates or terminates a call, staff observes that BellSouth's SS7 message charge would be applied; however, BellSouth's local switching rate reduction is not applicable. Therefore, BellSouth's tariff clearly increases the overall costs for IXCs to originate or terminate traffic to ALEC end users. For this reason, staff believes that in order for BellSouth's per message charge and subsequent rate reduction to appropriately impact all carriers indiscriminately, BellSouth should have reduced its tandem switching rate.

Staff considered the parties' testimony regarding jurisdictional reporting. ITC^DeltaCom witness Brownworth claims that ITC^DeltaCom does not know how to file a signaling jurisdictional report. He contends that BellSouth has a conflict in methodology for reporting jurisdiction, and third-party providers would have an additional burden to ask for, differentiate, and apply competitors' jurisdictional data, "which is very sensitive company data." (TR 52-55, 105) BellSouth witness Brownworth contends that third-party SS7 providers such as ITC^DeltaCom could require their subscribers to report jurisdiction. He asserts that BellSouth requires all of its interconnecting carriers to provide PLU and PIU, which are referenced in both the FCC and intrastate tariffs. (TR 186) Staff agrees with BellSouth that a third-party SS7 provider should be able to request PLU and PIU information from its subscribers. However, BellSouth witness Follensbee also testifies that call duration and signaling are not linearly related, which means a five-minute call typically generates the same number of SS7 messages as an hour-long call. (TR 270-271) For this reason, staff believes that a carrier that does not employ a message counting system could not accurately know the jurisdictional percentages of its SS7 messages, nor could the Petitioners audit BellSouth's bills. (Petitioners TR 135) Accordingly, staff believes that BellSouth's tariff requires third-party SS7 providers to either invest in a similar message counting system, report jurisdiction without a sound methodology, or pay based on BellSouth's "50 percent interstate, 50 percent intrastate" default.

It appears to staff that BellSouth created this tariff to generate additional revenues. (EXH 4, p. 1) Ironically, staff observes that BellSouth's tariff could adversely impact BellSouth. A third-party hubbing vendor could invest in a message counting system and bill BellSouth per message, conceded as fair by BellSouth. (Randklev TR 297) However, the vendor could bill BellSouth at a higher rate. Staff perceives this as reasonable due to the validity of BellSouth's argument that intraLATA toll message charges are not required to be cost-based, because signaling for intraLATA toll is not a UNE. (Follensbee 213-214) Considering that logically the number of messages would be equal, with exception offered to message failure, BellSouth would always owe the vendor a net amount per billing interval. Staff opines that BellSouth would then be advocating bill-and-keep. Intuitively, it is staff's opinion that the obvious negative impact on competitive carriers could very easily be re-directed

against BellSouth. Because of this, staff believes that bill-and-keep between SS7 providers is more appropriate.

Staff agrees with the Petitioners that SS7 signaling employs the facilities of all interconnected carriers. (Montano TR 131) Staff is persuaded that it is a necessary function of interconnection, and each carrier must endure the cost to invest in its own system or purchase the service from BellSouth or an alternative SS7 provider. In view of this impact, staff believes that BellSouth should not be allowed to use its position as the dominant access provider to levy charges on competitive SS7 providers." Staff notes that the Petitioners bear the cost responsibility of installing the B-link to BellSouth's network for non-local traffic. (Follensbee TR 267)

Staff believes that it may be reasonable for BellSouth to pursue charging carriers on a per message basis when that carrier purchases BellSouth's SS7, because there are alternative SS7 providers available to those carriers. However, staff believes that imposing these charges on carriers that provide their own SS7 is inappropriate. The impact is detrimental to competitive SS7 providers and is in violation of Section 364.01(4), Florida Statutes. Staff notes that due to BellSouth's tariff, ITC^DeltaCom has not added any new customers. (Petitioners TR 43) Staff believes that a carrier with its own SS7 network provides an **equal** functionality to complete calls; one carrier's network is not used disproportionately, because most messages solicit a response. Regardless, since BellSouth's tariff seeks compensation for usage, messages sent and received, staff believes that usage between SS7 providers networks is essentially **equal**, disregarding the atypical message failure. Staff notes that the SS7 network was in place before BellSouth deployed its message counting system and implemented its CCS7 tariff. (Milner TR 226) Staff believes that the overall impact of BellSouth's tariff is increased costs for competitors for a pre-existing network functionality with no apparent gain to BellSouth, assuming revenue neutrality. Therefore, staff believes that BellSouth's per message charge for carriers that provide their own SS7 is not appropriate.

Further, staff believes that BellSouth's CCS7 tariff unduly discriminates against a particular class of carriers -- namely, those CLECs that provide their own SS7 networks. Since a competitor's SS7 network and BellSouth's SS7 network are interconnected and operate in reciprocal fashion, handling like volumes, staff believes there is no justification for having a

system of inter-company billing. Inter-company billing inherently creates additional cost, and staff does not perceive any associated benefits with such a system. For these reasons, staff believes that this tariff unduly discriminates against carriers that provide their own SS7 networks by imposing unnecessary costs, which constitutes a violation of Section 364.10(1), Florida Statutes. Pursuant to Section 364.10(1), Florida Statutes, a LEC cannot "subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

CONCLUSION:

Staff believes that BellSouth's CCS7 Access Arrangement Tariff would unnecessarily and unreasonably increase costs for competitive carriers that provision their own SS7 networks by requiring that they invest in a system simply to reciprocal bill BellSouth. Staff notes that the Commission determined that CLECs are precluded from providing access in BellSouth's territory for itself or any other entity where interconnection trunks are employed with BellSouth. Therefore, carriers are practically forced to interconnect with BellSouth's SS7 network.

Pursuant to Section 364.01(4)(g), Florida Statutes, the Commission shall "ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraints." By imposing unnecessary costs and, in effect, unduly discriminating against carriers that provide their own SS7 networks, staff believes this action to be anticompetitive. Pursuant to Section 364.10(1), Florida Statutes, a LEC cannot "subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." The statute requires that all subscribers who are similarly situated be afforded similar treatment. To do otherwise would constitute an "undue or unreasonable prejudice." In this instance, staff believes that the tariff confers the same treatment on subscribers who are not similarly situated. As a result, staff believes the anticompetitive nature of this tariff along with the discrimination resulting from this tariff should be considered in determining whether BellSouth's tariff should remain in effect.

ISSUE 10: Should BellSouth's CCS7 Access Arrangement Tariff remain in effect? If not, what action(s) should the Florida Public Service Commission take?

RECOMMENDATION: Staff recommends that the evidence supports a finding that BellSouth's CCS7 Access Arrangement tariff should be canceled. BellSouth should be ordered to refund, on a customer-specific basis, any net increase resulting from applying the present tariff as compared to a revenue-neutral tariff, in which the CCS7 rates would be adjusted and the application of those rates would be limited to carriers that do not have their own SS7 networks. BellSouth should be required to submit a refund plan within 30 days of the Final Order from this recommendation for staff review. **(TEITZMAN, SIMMONS)**

POSITION OF THE PARTIES:

PETITIONERS: No. BellSouth's CCS7 access arrangement tariff should not remain in effect. It violates Section 364.163, Florida Statutes, it is not revenue neutral, and it discriminates against ALECs, IXCs and wireless carriers to the advantage of BellSouth and the other Florida ILECs. If BellSouth seeks to impose new charges on carriers for its SS7 service, it must do so in compliance with Florida Statutes and federal law.

BELLSOUTH: BellSouth's tariff should remain in effect.

STAFF ANALYSIS: This issue addresses whether BellSouth's CCS7 access arrangement tariff should remain in effect, and the action(s) the Commission should take if the tariff does not remain in effect.

Arguments

ITC^DeltaCom witness Brownworth argues that the CCS7 tariff should not remain in effect because the tariff is not revenue neutral, the tariff and product lacks the billing detail necessary for customers to fully utilize the service, and the filing discriminates against ITC^DeltaCom and other carriers. (TR 61) On the first point, revenue neutrality, the message demand was underestimated, which led to BellSouth receiving more CCS7 revenue than was offset by revenue deductions in local switching. Secondly, BellSouth's billing detail only shows total ISUP and TCAP messages per STP. Finally, the tariff unfairly discriminates

and places ITC^ DeltaCom at a competitive disadvantage.
(Brownworth TR 61,62)

Further, witness Brownworth explains that the CCS7 tariff is discriminatory in the following ways: (1) The independent telephone companies are provided SS7 message services from BellSouth at no charge; (2) BellSouth has spent a significant amount of capital to develop a billing system for a "revenue neutral" filing; and (3) ITC^DeltaCom believes it is being billed inappropriately for SS7 messages due to the reciprocal nature of BellSouth's and ITC^ DeltaCom's networks. (TR 62)

Moreover, witness Brownworth contends that all intraLATA toll traffic is routed through BellSouth's access tandem and subject to tandem switching rates. Therefore, to the Petitioners, the tariff represents a pure increase in rates, because the Petitioners do not employ BellSouth's end office switching. (TR 97-98)

US LEC witness Montano supports the withdrawal of the tariff and does not believe that BellSouth should recover these charges from any carriers. Further, since ISUP messages flow in both directions during the life of a call without regard to whether the call originated on an ALEC's network or on an ILEC's network, and are jointly provided by the networks involved in the call, there should be a bill-and-keep arrangement. (TR 137) ITC^DeltaCom witness Brownworth also believes the bill-and-keep arrangement should be offered on a nondiscriminatory basis. (TR 40)

WorldCom witness Argenbright argues that the Commission should reject BellSouth's filing and return the monies billed to date under this tariff to the carriers that were charged. Witness Argenbright further argues that if the Commission does not reject this tariff filing, the Commission should reduce BellSouth's proposed rates to match those TELRIC rates established in Docket No. 990649-TP. (TR 168)

BellSouth witness Follensbee adopted the testimony of Mr. Ruscilli. Witness Follensbee argues that BellSouth's tariff should remain in effect because BellSouth is providing a service of value and is entitled to compensation. BellSouth should be compensated for the ALECs' use of BellSouth's SS7 network for non-local intrastate calls. According to witness Follensbee, the CCS7 tariff will also enable BellSouth to be properly compensated for use of its SS7 capability in relation to local calls by third-party hubbing vendors that do not have local interconnection

agreements with BellSouth. Further, witness Follensbee states that BellSouth should not be prohibited from amending its tariffs to require the cost-causer of a network access service to pay for the network access service it receives from BellSouth merely because BellSouth's tariffs had not previously set forth a charge for that network access service. Instead, under such circumstances, BellSouth should be allowed to do what it has done in this tariff filing: introduce a charge for a network access service by making a filing that is revenue neutral in the aggregate. Once the charge is introduced in this fashion, BellSouth should be allowed to adjust the charge annually in compliance with Section 364.163, Florida Statutes. (TR 207)

Oral Argument

Counsel for US LEC argues that BellSouth's CCS7 access arrangement tariff should be canceled and that BellSouth should be ordered to refund on a customer-specific basis any net increase resulting from this tariff. (ORTR 11)²

Counsel for BellSouth argues that if a refund is required, his company will need 90 days to implement the plan. In addition, he requests that the refund be issued as a bill credit rather than made via check. (ORTR 66-67)

Analysis

Based on the evidence presented in this proceeding, staff has reached the following conclusions: (1) the CCS7 access tariff is not a new service, but a rate restructure; (2) the CCS7 access tariff is not revenue-neutral; and (3) the CCS7 access tariff would unnecessarily and unreasonably increase costs for competitive carriers that provision their own SS7 networks by requiring them to invest in a system to bill BellSouth.

As previously discussed in Issues 2 and 4, BellSouth's witness Follensbee admitted that prior to the implementation of its Link Monitoring System, BellSouth was recovering the cost of SS7 usage through the provision of switched access services instead of on a separate per message basis (TR 218); thus, staff does not believe the CCS7 access tariff is a new service as alleged by BellSouth. As discussed in Issue 3, and by its own

²Oral Argument Transcript

admission, BellSouth witness Follensbee states that it tried in good faith to make this tariff revenue neutral, but the revenues generated by this tariff filing exceed the worth of the reductions made in local switching rates. Further, BellSouth acknowledges that it is willing to make the adjustment necessary to obtain revenue neutrality after reviewing the next six months of data, and that it has no further intentions at this time to make future adjustments to preserve revenue neutrality.

As staff explained in Issue 4, BellSouth characterizes its SS7 service as both a non-basic service and a network access service. Section 364.02 (8), Florida Statutes, defines a "non-basic service" as "any telecommunications service provided by a local telecommunications company **other** than a basic local telecommunications service, a local interconnection arrangement in Section 364.16, or a network access service described in Section 364.163." Accordingly, under Florida law, BellSouth's CCS7 service cannot be construed as both a non-basic service subject to Section 364.051(5), Florida Statutes, and a Network Access Service subject to Section 364.163, Florida Statutes. Staff believes CCS7 service is best characterized as a network access service, and thus it is not necessary to address whether the CCS7 Access Arrangement Tariff complies with Section 364.051(5), Florida Statutes.

BellSouth witness Follensbee testifies that BellSouth implemented this tariff to allow recovery of BellSouth's CCS7 costs in a manner that reflects more accurately the way in which these costs are incurred. (TR 218) Although staff believes BellSouth's billing methodology, from a technical perspective, is accurate, staff does not believe it is possible for a carrier to report the appropriate jurisdictional factors without purchasing a message counting system. Consequently, messages would be inappropriately billed based on BellSouth's default jurisdictional factor.

As discussed in Issue 8, BellSouth's CCS7 access tariff would unnecessarily and unreasonably increase costs for competitive carriers that provide their own networks by effectively requiring that they invest in a system simply to bill BellSouth. Although staff is persuaded that BellSouth should be allowed to charge carriers on a per message basis when a carrier purchases BellSouth's CCS7 service, staff believes that imposing charges on carriers that provide their own SS7 is inappropriate because the impact is detrimental to competitive SS7 providers.

Further, BellSouth should not be allowed to use its position as the dominant access provider to levy charges on a competitive provider.

WorldCom witness Argenbright contends that if the Commission does not reject this tariff filing, the Commission should reduce BellSouth's proposed rates to match those TELRIC rates established in Docket No. 990649-TP (TR 168). US LEC witness Montano asserts that there should be no charges for non-local intraLATA SS7 signaling; however, she opines that BellSouth's proposed rates should be cost-based. She believes that BellSouth's proposed rates should be related to its cost of providing the signaling. (EXH 2, Montano Deposition pp. 15-16) BellSouth witness Follensbee asserts that pursuant to the Act, BellSouth is only obligated to charge TELRIC or cost-based rates for unbundled network elements (UNEs), and he contends that non-local SS7 intrastate messages are not UNEs (TR 213-214). Although staff agrees with witness Follensbee's assertion, staff notes that under BellSouth's tariff, carriers are billed for local SS7 messages when a carrier does not have an interconnection agreement with BellSouth, such as would be the case with third-party hubbing vendors. (Follensbee TR 207)

BellSouth states in its brief that if the Commission orders BellSouth to withdraw its CCS7 tariff, the Commission should take at least two additional actions. First, the Commission should allow BellSouth to reinstate the higher local switching rates that existed before the CCS7 tariff went into effect. Second, the Commission should allow BellSouth to bill carriers for the difference between the lower local switching rates they have been enjoying since the CCS7 tariff went into effect and the higher local switching rates they would have paid if the CCS7 tariff had not gone into effect. If carriers are going to be placed in the same position they would have occupied had the CCS7 tariff never gone into effect, then fairness, equity, and the law dictate that BellSouth also must be placed in the same position it would have occupied had the CCS7 tariff never gone into effect. (BellSouth BR at 34-35)

CONCLUSION:

Staff believes that BellSouth's CCS7 tariff unduly discriminates against a particular class of carriers -- namely, those CLECs that provide their own SS7 networks. Since a competitor's SS7 network and BellSouth's SS7 network are interconnected and operate in reciprocal fashion, handling like

volumes, staff believes there is no justification for having a system of inter-company billing. Inter-company billing inherently creates additional cost, and staff does not perceive any associated benefits with such a system. For these reasons, staff believes that this tariff unduly discriminates against carriers that provide their own SS7 networks by imposing unnecessary costs, which constitutes a violation of Section 364.10(1), Florida Statutes. Pursuant to Section 364.10(1), Florida Statutes, a LEC cannot "subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Based on the above, staff believes that BellSouth's CCS7 Access Arrangement tariff should be canceled. In such an event, BellSouth argues that carriers should be placed in the same position they would have occupied had the tariff never gone into effect. While this would be consistent with traditional practice, staff observes that this situation may be unique since only a particular class of carriers, those that provide their own SS7 networks, appear to have been particularly aggrieved by this tariff. In addition, however, staff notes that other classes of carriers may have been affected by virtue of the tariff filing not being revenue neutral as originally claimed. Any refund plan needs to consider these dynamics.

In its simplest form, the refund plan should be based on a comparison of what a carrier was actually charged versus what a carrier should have been charged. In this instance, staff believes that there are different possible approaches to determining what a carrier should have been charged. The possibilities are described below.

The first possibility is to assume that carriers should have been charged based on the old tariff (i.e., no per message charges for signaling, but a higher local switching rate). BellSouth advocates this approach if the new tariff is ordered to be canceled. A second approach is to assume that carriers should have been charged based on a revenue-neutral tariff filing, which recognizes that the tariff at issue has some merit in concept, but should not generate a positive revenue effect for BellSouth. In addition to not being revenue neutral, staff believes that the tariff is problematic from the standpoint that it discriminates against those carriers that provide their own SS7 networks by imposing unwarranted message charges for reciprocal signaling.

While using the old tariff as a base of reference for calculating the refunds would be the traditional practice, staff does not favor that approach since a particular class of carriers, those that provide their own SS7 networks, appear to have been particularly aggrieved by this tariff. Accordingly, staff next considers the approach which assumes that carriers should have been charged based on a revenue-neutral tariff filing, but those carriers that provided their own SS7 networks should not have been charged. Revenue neutrality could be achieved in one of two ways: by adjusting the local switching rate further (BellSouth's suggested approach to achieve revenue neutrality), or adjusting the CCS7 rates. Under either method, the rate and revenue calculations would need to consider that the volume of messages subject to signaling charges would be reduced by the number of messages associated with carriers that have their own SS7 networks.

Of the two methods for achieving revenue neutrality, staff favors adjusting the CCS7 rates. This recommendation is based on the discussion in Issue 3, wherein there is seeming agreement that the CCS7 message forecasts were understated. In turn, these understated forecasts would have had the effect of overstating the CCS7 rates. Based on how the tariff filing came to have a positive revenue effect, staff believes it would be most logical to achieve revenue neutrality by adjusting the CCS7 rates and to limit applicability of those rates to carriers that do not have their own SS7 networks.

Staff recommends that BellSouth should be ordered to recalculate carrier bills for the period of time the tariff has been in effect. Consistent with the above analysis, this recalculation should be based on a comparison of the present tariff and a revenue-neutral tariff, in which the CCS7 rates would be adjusted and the application of those rates would be limited to carriers that do not have their own SS7 networks. If such a recalculation indicates that a carrier was overcharged, BellSouth should be required to refund the amount of the overcharge. BellSouth should be required to submit a refund plan within 30 days of the Final Order from this recommendation for staff review.

ISSUE 11: If the tariff is to be withdrawn, what alternatives, if any, are available to BellSouth to establish a charge for non-local CCS7 access service pursuant to Florida law?

RECOMMENDATION: Given the limited nature of the record, staff believes there is insufficient support for a Commission decision. However, if the parties to this docket wish to explore alternatives, staff believes an informal staff workshop could be held for this purpose. **(TEITZMAN, SIMMONS)**

POSITION OF THE PARTIES:

PETITIONERS: The purpose of this docket is to review the legality of BellSouth's CCS7 tariff as filed, not to offer BellSouth other opportunities to unlawfully and in a discriminatory manner, raise its rates to harm its competitors.

BELLSOUTH: BellSouth's tariff should not be withdrawn.

STAFF ANALYSIS: This issue addresses the alternatives, if any, that are available to BellSouth if its CCS7 tariff is withdrawn.

Arguments

While the Petitioners did not address this issue to any great extent, their limited testimony suggests that BellSouth should have reduced the tandem switching rate, rather than the end office switching rate. The Petitioners contend that all intraLATA toll traffic is routed through BellSouth's access tandem and subject to tandem switching rates. Therefore, to the Petitioners, the tariff represents a pure increase in rates, because the Petitioners do not employ BellSouth's end office switching. (Petitioners TR 97-98)

BellSouth witness Follensbee argues that BellSouth's CCS7 tariff should not be withdrawn. However, he asserts that if the Commission decides to the contrary, the Commission should establish appropriate procedures to be followed when introducing a charge for a network access service that is being provided but for which there is no tariffed rate. Further, BellSouth should not be prohibited from amending its tariffs to more accurately reflect the manner in which costs are incurred merely because its tariffs had not previously set forth a charge for that network access service. (TR 208)

CONCLUSION:

Given the limited nature of the record, staff believes there is insufficient support for a Commission decision. However, if the Commission approves staff's recommendation in Issue 8 and the current CCS7 tariff is canceled, BellSouth is not prohibited from filing a revised tariff addressing rates for CCS7 service. Staff notes that if BellSouth chooses to file a revised tariff addressing CCS7, the tariff should comply with all findings of the Commission in this docket. Further, the revised tariff filing must be compliant with Section 364.163, Florida Statutes, as amended by the Tele-Competition Innovation and Infrastructure Enhancement Act³ enacted by the Florida Legislature during the 2003 Regular Session.

³The Tele-Competition Innovation and Infrastructure Enhancement Act became effective on May 23, 2003, which occurred after commencement of this docket.

ISSUE 12: Should the docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 10, then the docket should remain open to address the refunds. BellSouth should be required to submit a refund plan within 30 days of the Final Order from this recommendation for staff review. If BellSouth satisfactorily completes the refunds in accordance with its plan, this docket should be closed administratively. However, if the Commission denies staff's recommendation on Issue 10, then the docket should be closed upon expiration of the appeals period. **(TEITZMAN)**

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issue 10, then the docket should remain open to process the refunds. BellSouth should be required to submit a refund plan within 30 days of the Final Order from this recommendation for staff review. If BellSouth satisfactorily completes the refunds in accordance with its plan, this docket should be closed administratively. However, if the Commission denies staff's recommendation on Issue 10, then the docket should be closed upon expiration of the appeals period.